

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
August 26, 2008 Session

STATE OF TENNESSEE v. JAMES ROBARS SARTIN

**Direct Appeal from the Circuit Court for Knox County
No. 81836 Kenneth F. Irvine, Jr., Judge**

No. E2008-00354-CCA-R3-CD - Filed September 9, 2008

The Defendant, James Robars Sartin, pled guilty to one count of observation without consent. Pursuant to Tenn. Code Ann. § 40-35-313, the trial court granted the Defendant judicial diversion and placed the Defendant on supervised probation for eleven months and twenty-nine days. On the last day of the probationary period, the State filed a motion to revoke the Defendant's judicial diversion. At the subsequent hearing, the court revoked the Defendant's judicial diversion, entered a judgment of conviction, and sentenced him to eleven months, twenty-nine days of unsupervised probation. It is from this judgment that the Defendant now appeals. After reviewing the record, we reverse the judgment of the trial court and remand for further proceedings consistent with this opinion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed and Remanded

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and J.C. McLIN, JJ., joined.

Jessica Greene, Knoxville, Tennessee, for the Appellant, James Robars Sartin.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Matthew Bryant Haskell, Assistant Attorney General; Randall E. Nichols, District Attorney General; Patricia Cristil, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Procedural History

The Defendant appeals from the trial court's revocation of his judicial diversion and subsequent sentence of eleven months, twenty-nine days of unsupervised probation. The Defendant pled guilty to one count of observation without consent, a Class A misdemeanor. The trial court

granted the Defendant judicial diversion, deferred further proceedings against the Defendant, and placed him on supervised probation for eleven months and twenty-nine days. Conditions of probation included payment of court costs. The period of judicial diversion was to end on August 23, 2007. *See* T.C.A. § 40-35-313(A)(1)(a) (2007).

On August 23, 2007 the State filed a motion to revoke the Defendant's judicial diversion due to the Defendant's failure to pay his court costs. However, the trial court did not issue a warrant. Instead, the court ordered the Defendant to appear, but the Defendant failed to appear. After several continuances, the Defendant paid a substantial part of his court costs on January 9, 2008; and the Defendant paid the balance of the court costs at his revocation hearing on January 11, 2008. The trial court revoked the Defendant's judicial diversion, entered a judgment of conviction, and sentenced him to eleven months, twenty-nine days of unsupervised probation. It is from this judgment that the Defendant now appeals.

II. Analysis

On appeal, the Defendant claims that the trial court erred in revoking his judicial diversion, because the Defendant did not wilfully fail to pay his court costs. The State disagrees. After a thorough review of the case, we do not reach the merits of the parties' arguments, because we conclude that the trial court lacked jurisdiction to revoke the Defendant's judicial diversion. The State's motion to revoke judicial diversion did not effectively toll the original probationary period, which expired on August 23, 2007. Therefore, we must vacate the judgment of conviction entered by the trial court.

In Tennessee, "whenever it comes to the attention of a trial judge that any Defendant who has been released upon suspension of sentence, has...violated the conditions of probation, the trial judge shall have the power to cause to be issued under the trial judge's hand a warrant for the arrest of the Defendant." T.C.A. § 40-35-311 (2006). In *State v. Anthony*, this court interpreted this statute and concluded that expiration of a term of probation is stayed only by the filing of a violation *warrant*; a violation report is insufficient. 109 S.W.3d 377, 382 (Tenn. Crim. App. 2001); *see also State v. Shad Tankersley*, No. W2005-02901-CCA-R3-CD, 2007 WL 1249212, at *4 (Tenn. Crim. App., at Jackson, April 30, 2007) ("[T]he clear intent of the legislature in dealing with probation violations [is] to require the issuance of a warrant, and the issuance of such a warrant is the only event which tolls the expiration of the probationary period."), *no Tenn. R. App. P. 11 application filed*. Thus, a trial court's issuance of a warrant is the exclusive means of tolling the expiration of the probationary period. A motion to revoke probation, like the filing of a violation report, is insufficient to toll the expiration of the probationary period.

In the case under submission, the trial court lacked jurisdiction to revoke the Defendant's judicial diversion. The State filed a motion to revoke the Defendant's judicial diversion on August 23, 2007, but no warrant was issued. Without the warrant tolling the probationary period, the Defendant's original term of judicial diversion ended on August 23, 2007. The trial court's subsequent hearing and revocation of the Defendant's probation was several months after the

Defendant completed his eleven month, twenty-nine day probation period. Consequently, the trial court was without jurisdiction to revoke the Defendant's judicial diversion, enter a judgment of conviction, and order the Defendant to serve eleven months, twenty-nine days of unsupervised probation. Accordingly, we must reverse the judgment of the trial court, vacate the judgment of conviction, and remand for the entry of an order dismissing the observation without consent count of indictment 81836.

III. Conclusion

After a thorough review of the record and applicable authorities, we conclude that the trial court lacked jurisdiction to revoke the Defendant's judicial diversion. As such, the judgment of the trial court is reversed and remanded for further proceedings in accordance with this opinion.

ROBERT W. WEDEMEYER, JUDGE